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Forth-sixth session
Agenda item 18

EFFECTIVE FUNCTIONING OF BODIES ESTABLISHED PURSUANT TO UNITED NATIONS HUMAN RIGHTS INSTRUMENTS

Written statement submitted by the International Federation of Human Rights, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[1 February 1990]

I. OBJECTIVE: TO ENHANCE THE EFFECTIVENESS OF HUMAN RIGHTS PROTECTION IN UNITED NATIONS TREATY BODIES

1. In its resolution 1989/47, the Commission on Human Rights:

(a) Affirmed "that the effective implementation of United Nations human rights instruments is of major importance" ...

(b) Considered "that the effective functioning of treaty bodies established pursuant to United Nations human rights instruments is indispensable" ...

(c) Requested the Secretary-General "to entrust an independent expert with the task of preparing a study ... on possible long-term approaches to enhance the effective operation of ... bodies established under United Nations human rights instruments" 1/

2. Effective human rights protection would be ineffective in practice for victims if it were not intended to provide a real guarantee.

The sixth preambular paragraph of the Universal Declaration of Human Rights of 10 December 1948 ensures that the promotion of universal respect for and observance of human rights and fundamental freedoms shall be carried out "in co-operation with the United Nations".

3. Concerned at all times with the practical application of the fundamental rights of the human person, States agreed to set up a number of "committees" entrusted with considering communications from individuals, through the implementation of the following provisions:

(a) Article 1 of the Optional Protocol to the International Covenant on Civil and Political Rights; 2/

(b) Article 14 (1) of the International Convention on the Elimination of All Forms of Racial Discrimination;

(c) Article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. 3/

Each of these instruments stipulates that the competent committee shall not consider any communication from an individual until all available domestic remedies have been exhausted.

II. OBSTACLES AND POSSIBLE REMEDIES

4. Those responsible for specifically implementing the machinery for individual communications in the various committees note that a series of obstacles significantly reduces the level of protection sought by the instruments.

(a) <u>At the stage of submission to the competent committee after exhaustion of domestic remedies</u>:

The recognition of a right implies a need for action to be taken. If an alleged violation is not brought to the committee's attention, it will continue in silence. In practice, however, referral to the competent committee may also depend on the victim's own financial circumstances. In contrast to the European system, 4/ the instruments adopted within the United Nations make no provision for "legal aid". The International Federation of Human Rights strongly urges that an immediate solution should be found to remedy a situation which affects those who are most disadvantaged.

(b) At the stage of the consideration of communications by the competent committee:

(i) The amicable settlement

In contrast to the procedure prescribed in European forums, 5/ a committee seized with a communication does not have a legal obligation to seek an amicable settlement between the individual and the Government which has come under scrutiny. The International Federation of Human Rights considers it desirable to include such an option in the committee's rules of procedure, while specifying that an amicable settlement should be based on respect for human rights.

(ii) Admissibility of oral submissions

Neither the applicant nor his representative may make oral submissions to the committee. The International Federation of Human Rights is strongly in favour of changing this situation, since the admissibility of oral submissions and the presence of the petitioner or his representative in the committee stems directly from the principle of the "fair hearing", established in article 14 of the International Covenant on Civil and Political Rights.

(iii) Rapporteur-adviser to the committee

The complexity of certain questions, the workload of the sessions and the geographical distances separating members of committees are real factors which may delay or jeopardize the adoption of findings. The International Federation of Human Rights advocates more systematic use of committee rapporteur-advisers chosen from committee members.

(iv) Abandonment of the practice known as the "Consensus"

The International Federation of Human Rights considers that the adoption of decisions virtually unanimously (by consensus) by committees should be abandoned in cases where instruments for the adoption of decisions by a majority of members present. For example, the "consensus" rule conflicts with articles 39 (2) (b) of the International Covenant on Civil and Political Rights and 51 (a) of the provisional rules of procedure of the Human Rights Committee.

(c) At the stage of the execution of decisions adopted by treaty bodies:

Article 54 of the European Convention on Human Rights confers on the Committee of Ministers authority to supervise the execution of the judgement of the Strasburg Court. No similar provision exists in instruments adopted within the United Nations. The International Federation of Human Rights Federation, like other specialists, would like a special rapporteur to be granted authority to supervise the execution of decisions taken.

READEX

CONCLUSION

5. The International Federation of Human Rights strongly urges that the above measures should be studied and adopted in the short term, in order not to jeopardize the effectiveness of protection sought in the United Nations treaty bodies.

6. The effective functioning of the treaty bodies also requires that a prompt response should be given to the question of increasing the staff of the Centre for Human Rights, whose activities are growing in proportion to the number of Member States.

In this connection, the International Federation of Human Rights recalls that in its 1989 report to the General Assembly, the Human Rights Committee "urgently" requested the Secretary-General to take the appropriate measures "considerably to increase" the numbers of staff assigned to its work.

7. The deletion of imprecise expressions from texts is also essential for the effective functioning of treaty bodies. The International Human Rights Federation invites the Commission to request, during Mrs. Purification Valera Quisumbing's term as Chairman and during its forty-sixth session, that the expression "human rights" should be replaced by "fundamental rights of the human person" in its texts.

8. At the close of the twentieth century, the idea of an International Court of Human Rights confined to the United Nations system, comprising chambers and committees in equal number, is no longer a pipedream, but a realizable objective on which work should begin now.

Notes

1/ See also Article 55 (c) of the Charter of the United Nations and the preamble to the Universal Declaration of 10 December 1948.

2/ Forty-eight States have ratified the Optional Protocol.

3/ Twenty-three States have recognized the competence of the Committee.

4/ Addendum to the rules of procedure of the European Convention on Human Rights.

5/ Article 28 (b) of the European Convention on Human Rights.

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IMPLEMENTATION OF THE INTERNATIONAL CONVENTION ON THE SUPPRESSION AND PUNISHMENT OF THE CRIME OF APARTHEID

Written statement submitted by the Women's International Democratic Federation, a non-governmental organization in consultative status (category I)

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[17 January 1990]

1. The WIDF strongly condemns the policy and practice of apartheid and calls for an immediate end to this most cruel form of social discrimination. Accordingly, it fully supports the International Convention on the Suppression and Punishment of the Crime of Apartheid, which it has included as an important item in its programme of work in order to mobilize its affiliated organizations in their efforts to combat apartheid.

2. The WIDF reiterates at the forty-sixth session of the Commission on Human Rights all the comments and suggestions contained in the statement it submitted at the Commission's forty-fifth session.

3. Recalling all the relevant resolutions adopted by the United Nations General Assembly pursuant to the International Convention on the Suppression and Punishment of the Crime of Apartheid.

4. The WIDF reaffirms its belief that apartheid is a total negation of the purposes and principles of the United Nations Charter and constitutes a flagrant violation of human rights and a crime against humanity that poses a serious threat to international peace and security.

5. The WIDF bases itself on the Nairobi Forward-Looking Strategies for the Advancement of Women and the Convention on the Elimination of All Forms of Discrimination Against Women in supporting all initiatives for the promotion of the rights of women and children suffering as a result of the inhuman practices of apartheid.

6. The WIDF takes the opportunity in all international forums, conferences and congresses to draw the attention of the international community to the flagrant and cruel violations committed by the apartheid régime against the men, women and children of South Africa.

7. Deeply concerned about the undeclared war of destabilization and aggression being waged by South Africa against the neighbouring independent African States,

8. The WIDF is convinced that the implementation of global and mandatory sanctions against South Africa is a peaceful means which the international community may use to put an end to the system of apartheid.

9. The WIDF expresses its profound indignation at the fact that apartheid is still institutionalized and states its belief that apartheid cannot be reformed, but must be abolished.

10. The WIDF strongly condemns the tragic escalation of human rights violations in South Africa since the state of emergency which was imposed in June 1986 and which has been strengthened by the many regulations enacted subsequently.

11. The WIDF strongly condemns the arrest and widespread imprisonment of children and pregnant women in the unhealthy and humiliating conditions of the inhuman apartheid system.

12. The WIDF again calls for the unconditional and immediate release of Nelson Mandela and all political prisoners in South Africa.

13. The WIDF reaffirms its belief that it is necessary for all Governments to ratify or accede to the Convention on a universal basis and to implement its provisions in order to guarantee its effectiveness, thereby helping to eliminate the crime of apartheid.

14. The WIDF launches an appeal at the forty-sixth session that all States should intensify their efforts to increase public awareness by denouncing the crimes committed by the racist South African régime with a view to putting an end to the system of apartheid.